IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.9940 of 2005

Date of Decision : 8.9.2006

Sarwan Singh ... Petitioner

Versus

State of Punjab and others. ... Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. Sumeet Malhotra, Advocate,
for the petitioner.

Mr. B.S. Chahal, AAG Punjab,
for the respondents.

J.S.Khehar, J. (Oral)

A First Information Report was registered against the petitioner under Sections 365/342 of the Indian Penal Code at Police Station Nangal, District Ropar, on 26.2.2002. Consequent upon the registration of the aforesaid FIR, the petitioner was placed under suspension with effect from 1.3.2002.

Criminal prosecution was conducted against the petitioner on the basis of the allegations contained in FIR No. 17 dated 26.2.2002 referred to above, which culminated in the passing of a judgment/order dated 22.11.2004, by the Sub Divisional Judicial Magistrate, Anandpur Sahib. It would be pertinent to mention that by the aforesaid judgment/order dated 22.11.2004, the petitioner was acquitted.

Consequent upon the acquittal of the petitioner, he was ordered

to be reinstated into service with effect from the date of his acquittal i.e. 22.11.2004.

For the period from 1.3.2002 to 22.11.2004 (except for the period from 7.3.2002 to 9.8.2002), the petitioner was paid subsistence allowance in terms of Rule 16.20 of the Punjab Police Rules. Rule 16.20 is being extracted hereunder:-

> "16.20. Subsistence Grants – (1) A police officer under suspension shall be given a subsistence grant. If, as the result of an enquiry, a police officer under suspension is punished, his subsistence grant for the time spent under suspension may not exceed one-forth of his pay (Fundamental Rule 53); if he is acquitted either as the result of an original enquiry or on appeal, the assessment of the subsistence grant is governed by Fundamental Rule 54."

It is the contention of the learned counsel for the petitioner that the petitioner became entitled to full pay and allowances for the period, he remained under suspension (except for the period from 7.3.2002 to 9.8.2002) under Fundamental Rule 54 referred to in Rule 16.20 of the Punjab Police Rules. For the present controversy, Fundamental Rule 54(2) is relevant. The same is accordingly, extracted hereunder:-

> "FR 54(2) Where the authority competent to order re-instatement is of opinion that the government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provision of sub-rule (6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed,

removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be;

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct for reasons to be recorded in writing, that the government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount (not-being the whole) of such pay and allowances as it may determine.

(6) The payment of allowance under sub-rule (2) or sub-rule (4) shall be subject to all other conditions under which such allowances are admissible."

In terms of Fundamental Rule 54(2), the petitioner was issued a show cause notice dated 31.3.2005, wherein it was proposed to pay him nothing in addition to the subsistence allowance, which had already been paid to him. The reasons for the aforesaid decision are expressed in the aforesaid show cause notice dated 31.3.2005 relevant part whereof is extracted hereunder:-

"Keeping in view the above facts, at this stage, I am of the temporary opinion that why for the period of suspension from dated 01.03.2002 to 06.03.2002 and from dated 10.08.2002 to

> 21.11.2004 (the date of decision of the court), the due allowances and the half pay, which you have since received or yet to receive, may only be granted to you. Because the above mentioned criminal case, which had been lodged against you, was related to your personal affairs and was the result of your personal acts. Even then while showing mercy and sympathy towards you as well as your family, the department has granted the subsistence allowance to you without taking any duty from you. Apart from this, you have remained absent, without permission, without obtaining leave from dated 07.03.2002 to 09.08.2002. During this period you have even not performed any official duty. Accordingly, you are not entitled for the salary and allowances due for the period from dated 07.03.2002 till 09.08.2002. Therefore, you have to be reinstated in service with effect from 22.11.2004."

The petitioner responded to the aforesaid show cause notice claiming full pay and allowances for the period, he remained under suspension (except for the period from 7.3.2002 to 9.8.2002). Be that as it may, in consonance with the show cause notice issued to the petitioner, the petitioner was held entitled to subsistence allowance earlier paid to him under Rule 16.20 of the Punjab Police Rules from 1.3.2002 to 21.11.2004 (except for the period from 7.3.2002 to 9.8.2002). This determination was rendered by the Commandant 82nd Battalion, PAP Chandigarh vide his order dated 25.5.2005. The aforesaid order dated 25.5.2005 is subject matter of challenge at the hands of the petitioner.

The controversy in this case has to be adjudicated upon, on the

basis of the parameters as laid down in Fundamental Rule 54(2) reproduced herein above. A perusal of the aforesaid rule reveals that an employee dismissed/removed/compulsorily retired or suspended from service on being acquitted after the conclusion of the criminal prosecution initiated against him, would be entitled to the entire pay and allowances for the period he/she had remained under suspension, except when the competent authority is of the opinion that the employee in question has delayed the proceedings initiated against him. In such an eventuality, the competent authority, after issuing a show cause notice to the employee concerned, has the discretion to reduce the amount to be paid to such employee, if he arrives at the conclusion, that the culmination of the said proceedings was delayed for reasons attributable to the employee in question. On a perusal of the reasons recorded in the show cause notice, for not paying to the petitioner anything beyond the subsistence allowance, it is apparent that the competent authority was swayed by the fact that the criminal proceedings initiated against the petitioner were on the basis of his own act and conduct, including his own personal affairs. It is not the case of the competent authority even in the show cause notice, that the petitioner was responsible for delaying the proceedings being conducted against him. It is, therefore, apparent, that the solitary reason on the basis of which the petitioner can be denied full pay and allowances, for the period during which he had remained under suspension (except for the period from 7.3.2002 to 9.8.2002), namely for having delayed the proceedings of the criminal case initiated against him, did not exist, as one of the components on the basis of which the competent authority arrived at the conclusion for denying full back wages to the petitioner.

As against the submissions advanced by the learned counsel for the petitioner, it is the vehement contention of the learned counsel for the respondents, that merely because the petitioner has been acquitted, he cannot claim full pay and allowances for the period he remained under suspension. In order to substantiate the aforesaid contention, learned counsel for the respondents has placed reliance on a decision rendered by the Supreme Court in **Baldev Singh Vs. Union of India and others, 2006, Supreme Court Cases (L&S), 35**. We have perused the judgment relied upon by the learned counsel for the respondents. In the aforesaid judgment, the Apex Court did not have the occasion to interpret of Fundamental Rule 54(2) possibly because the same was inapplicable to the controversy adjudicated upon by the Apex Court in Baldev Singh's case (supra), or because the Courts attention was not invited to the said provision. Insofar as the present controversy is concerned, learned counsel for the petitioner has placed relied on Rule 16.20 of Punjab Police Rules, read with Fundamental Rule 54(2), and as such, so far as the adjudication of the controversy in hand is concerned, it will be necessary to interpret the aforesaid rule to determine the rights of the petitioner.

In view of the above, we are satisfied, that for the reasons indicated in the show cause notice issued to the petitioner, the petitioner could not have been denied full back wages for the period he had remained under suspension (except for the period from 7.3.2002 to 9.8.2002), on the conjoint reading of Rule 16.20 of the Punjab Police Rules and Fundamental Rule 54(2). Accordingly, we hereby set aside the impugned order dated 25.5.2005 and direct the respondents to pay full back wages to the petitioner for the period he remained under suspension from 1.3.2002 to 21.11.2004

(except for the period from 7.3.2002 to 9.8.2002).

Insofar as the period from 7.3.2002 to 9.8.2002 is concerned, it would be pertinent to mention that on account of the alleged absence of the petitioner from his employment for the aforesaid period, he was proceeded against departmentally, and inflicted with the punishment of stoppage of five annual increments with cumulative effect, wherein it was also concluded that the petitioner would not be entitled to any pay and allowances for the said period from 7.3.2002 to 9.8.2002. In view of the above, we are satisfied that the petitioner is not entitled to any pay and allowances for the said period.

The instant writ petition is accordingly disposed of with a direction to the respondents to pay full pay and allowance to the petitioner for the period he remained under suspension i.e. from 1.3.2002 to 21.11.2004 (except the period from 7.3.2002 to 9.8.2002).

(J.S. Khehar)
Judge

September 08, 2006
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(S.D. Anand)
Judge